

Application No. 10/633,463

REMARKS/ARGUMENTS

Claims 10-22 have been canceled as being directed to a non-elected invention. Applicant preserves its right to pursue a divisional application for these claims. The Examiner constructively elected Claims 24-31 as being directed to a non-elected invention. Applicant respectfully traverses this constructive election by the Examiner. Independent Claim 24 claims the same primary elements as Claim 1, except for specific details of the discharge device. Specifically, Claim 24 requires that the housing body has a downstream end extending beyond said downstream end of said inner tube to enable mixing of micro-ingredients. This modification to the claimed discharge device cannot be fairly interpreted as claiming an entirely new combination. Independent Claim 25 also claims the same primary elements as Claim 1, except that the discharge device is claimed more broadly, and the mixing tube extension element has been added. The mixing tube extension is shown in the preferred embodiment of Figure 6 as mixing tube extension 74. This modification to the claimed combination does not present a new combination that warrants an election of species. Independent Claim 27 claims the same primary elements as Claim 1, but adds the claimed mixing manifold. Original Claim 8 (now canceled) claimed the mixing manifold. Original Claim 8 depended from Claim 1. Claim 27 therefore claims the same basic elements as claimed in original Claim 8, claim 27 simply claiming additional structural details of the mixing manifold. Therefore, Claim 27 cannot be interpreted as a patentably distinct species. It is also noted that Claim 8 was grouped with the original Group I in the restriction requirement dated August 9, 2005. Claim 29 claims the same primary elements as Claim 1, but adds a second discharge device. The addition of this second discharge device

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does not warrant identification of the claim as corresponding to a patentably distinct species.

The remaining new claims, namely, 26, 28, 30 and 31 depend directly or indirectly from Claim 25, 27 and 29, respectively. Therefore, the Examiner's constructive election should be withdrawn.

Claims 1-6 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Specifically, the Examiner stated

"the specification fails to adequately provide support and describe the inner tube and body and which is "terminating substantially coterminous with one another"".

Applicant respectfully traverses this rejection. Figure 4 clearly illustrates the inner tube and the housing body each having a downstream end terminating substantially coterminous with one another. Additionally, in order to distinguish the embodiment in Figure 5, page 14, lines 9-14 state that the device shown in Figure 5 is the same as Figure 4 except the discharge tube extends downstream beyond the discharge end of the inner concentric tube. Inherent features of the inventions such as disclosed in the Figures do not require a detailed discussion in the description, particularly for the clear mechanical relationships shown in Figure 4. The Examiner has not stated that Figure 4 does not illustrate this feature, nor has the Examiner stated that Figure 4 is otherwise deficient with illustrating this feature. Alternatively, Applicant has amended the description to further recite that the inner tube and body terminate substantially coterminous with one another. Therefore, this rejection under Section 112 should be withdrawn.

Claims 1-6 were rejected under Section 103 as being unpatentable over Barlow in view of Fassauer and further in view of Winn, Jr. Applicant respectfully traverses this rejection.

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Claim 1 has been amended to further recite that the inner tube and body each extend continuously without openings between the upstream end and the downstream end. Even if it were obvious to combine the teachings of Winn, Winn clearly feels to disclose the claimed mixing device having an inner tube and an outer body extending continuously without openings between the upstream and downstream ends thereof. As shown and described in the Winn reference, the specific purpose of the mixing device therein is to provide recirculation of ingredients through the slurry inlet 26, this slurry inlet receiving slurry through the line 34 which communicates with the reservoir 12. The slurry inlet 26 is a prominent feature in Winn which allows the recirculation to take place. This slurry inlet is located between the upstream and downstream ends of the mixing apparatus. As clearly shown in the embodiment of Figure 4 of the present invention, the claimed discharge device simply includes two continuous and unbroken numbers, namely, the claimed inner tube and claimed housing, this arrangement preventing contact of liquid 68 with the dry micro-ingredients 66 until the micro-ingredients have exited the water curtain device (see page 14, lines 2-3). Claims 2-6 depend directly or indirectly from claim 1. Therefore, this rejection under section 103 should be withdrawn.

Claims 3-6 were rejected under §103, the Examiner further indicating that duplication of essential working parts of a device involves only routine skill in the art. (citing *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8). To the extent the Examiner takes judicial notice that the subject matter of Claims 2-6 is obvious, Applicant specifically traverses this conclusion, and requests that the Examiner provide documentary evidence which supports the Examiner's conclusion.

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The prior art of record does not show any duplication of components. Therefore, this rejection under §103 should be withdrawn.

Claim 23 was rejected under §103 as being unpatentable over Barlow in view of Fassauer, and further in view of Winn, Jr., and further in view of Pomerleau. Applicant respectfully traverses this rejection. Even if it were obvious to combine the teachings of Barlow, Fassauer, and Winn, Jr., Pomerleau fails to cure the deficiencies of the other references with respect to the subject matter of Claim 23. Specifically, Claim 23 requires that the discharge device further includes a flange connected to the downstream end of the inner tube wherein the flange acts as a nozzle to accelerate liquid flowing in the gap between the inner tube and the housing body. Pomerleau discloses a mixer for solids and liquids. As shown in Figure 2, air travels through pipe/conduit 7, and solid material travels through pipe 2. Liquid is introduced through manifold 15, and is added to the solid material downstream, as shown in the Figure. The arrangement of the flared portion 4 does not accelerate liquid in Pomerleau; rather, air is the element which is accelerated, and liquid is introduced separately through the separate manifold system. The specific purpose of the invention in Pomerleau is for intimate mixing of the liquid and solid material. On the contrary, the subject matter of Claim 23 provides a liquid curtain for dust control. (See page 13, lines 17-22, page 14, lines 1-3). The invention in Pomerleau is provided for a completely different purpose, and it cannot be obvious to combine the features of Pomerleau with the other references to obviate the subject matter of Claim 23. Therefore, this rejection under Section 103 should be withdrawn.

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New claim 32 has been added to further claim the present invention. Specifically, claim 32 corresponds to the discharge device shown in the preferred embodiment at Figure 6. Claim 32 requires the discharge device to further include a mixing plate suspended transversely across a mixing tube extension connected to the downstream end of the housing body. The references of record at least failed to disclose the claimed mixing plate suspended transversely across the mixing tube extension connected to the downstream end of the housing body. Therefore, new claim 32 should be allowed.

The application now appearing to be in form for allowance, early notification of same is respectfully requested. The Examiner is invited to contact the undersigned by telephone if doing so would expedite the resolution of this case.

Respectfully submitted,

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